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Attorneys for Defendant ELIZABETH A. HOLMES

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIZABETH A. HOLMES and RAMESH
“SUNNY” BALWANI,

Defendants.

Case No. CR-18-00258 EJD

**DECLARATION OF JEFFREY B.
COOPERSMITH IN SUPPORT OF
MOTION FOR CEASE AND DESIST
ORDER**

Hon. Edward J. Davila

DAVIS WRIGHT TREMAINE LLP

I, Jeffrey B. Coopersmith, declare as follows:

1. I am an attorney licensed to practice in the State of California and before this Court. I am a partner with the firm of Davis Wright Tremaine LLP, counsel for Defendant Ramesh Balwani in the above-captioned matter.

2. Attached as **Exhibit A** is a true and correct copy of the grand jury subpoena issued to Theranos, Inc. on September 6, 2017.

3. Attached as **Exhibit B** is a true and correct copy of the letter I sent to the United States Attorney's Office on August 31, 2018.

4. Attached as **Exhibit C** is a true and correct copy of an email sent from John Bostic to Michael Mugmon on September 1, 2018.

5. Attached at **Exhibit D** is a true and correct copy of an email sent from David Taylor to Theranos Stockholders on September 4, 2018.

6. I understand from counsel for Theranos that the production currently sought by the government pursuant to the September 6, 2017 grand jury subpoena involves hundreds of thousands of documents. I am further informed that, based on search terms, many of the documents are likely covered by the company's attorney-client privilege, but the company lacks the resources to protect its privileges. The defense is also concerned that under the circumstances here the voluminous material that the company would produce to the government likely contains documents covered by joint defense or common interest privileges belonging to the defendants. Reviewing hundreds of thousands of documents for this purpose would be enormously burdensome for defendants, and unnecessary when, as noted in our motion, the government's post-indictment use of the grand jury process is untethered to any second superseding indictment. I understand that the government has declined to form a "taint team" to screen privileged material from the government's trial team because of the burden associated with this.

7. I understand that Theranos's counsel offered to place responsive documents on a hard drive and keep that drive in the possession of its counsel in the event that the documents become properly discoverable in the future.

